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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/482,773 | 01/13/2000 | John D. Dreher | 2870/220 | 7449 |

26646 7590 02/10/2003

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| EXAMINER |
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WILLIS, MICHAEL A

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| ART UNIT | PAPER NUMBER |
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1617

DATE MAILED: 02/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/482,773

Applicant(s)

DREHER, JOHN D.

Examiner

Michael A. Willis

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 07 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 07 January 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

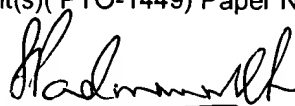
Claim(s) allowed: _____

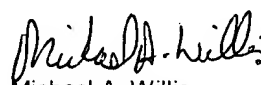
Claim(s) objected to: _____

Claim(s) rejected: 1-34

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


SREENI PADMANABHAN
PRIMARY EXAMINER


Michael A. Willis
Patent Examiner

2/7/03

Continuation of 2. NOTE: Applicant's amendment would require further consideration in adding the limitation "associated with aging of the skin". Such a limitation has not been previously considered. Additionally, the phrase would not place the application in better form by materially reducing or simplifying the issues in that it introduces a distinction between lines and wrinkles that are associated with aging and those that are not associated with aging.

Continuation of 3. Applicant's reply has overcome the following rejection(s): The rejection of claims 6, 12-14, 17-20, and 24 under 35 USC 112, second paragraph, is withdrawn. Applicant's arguments that one of ordinary skill in the art would understand the term "non-matte" is convincing. Specifically, as the term "matte" is a recognized term of the art meaning a "dull finish without luster" as suggested by applicant, one of ordinary skill would understand that "non-matte" means that the material has luster or gloss or shine or a similar type of appearance.

Continuation of 5. does NOT place the application in condition for allowance because: Claims 1-8 and 12-17 are rejected under 35 USC 102(b) as being anticipated by US 5,690,916 for reasons as stated previously. Applicant's arguments with respect to lines and wrinkles "associated with aging of the skin" are moot, as the amendment is not entered. The result of reducing the appearance of lines and wrinkles is inherently and necessarily met by the prior art in that the compositions of '916 interfere with the amount of transmitted light. As the amount of transmitted light is reduced, the ability to discern the appearance of features on the covered skin must necessarily be reduced. The Examiner has previously shown a rationale for concluding that the appearance of lines and wrinkles is necessarily reduced by the presence of a composition that reduces the amount of transmitted light. Therefore, the burden shifts to the applicant to show that the compositions of '916 would not necessarily reduce the appearance of such features on the skin. Applicant's arguments have not met this burden.

Claims 1-5, 9, 21-23, 25-26, and 29 are rejected under 35 USC 102(e) as being anticipated by WO 99/66883 for reasons as stated previously. Applicant argues that the disclosure in '883 of TimironTM and FlamencoTM does not meet the limitation of blue or violet interference pigments. However, according to the instant specification, "[t]he preferred blue or violet interference pigment is a titanated mica which is available, for example, from Rona under the tradename TimironTM, or from Engelhard under the tradename FlamencoTM. The latter pigments have only a blue or violet reflectance color" (see specification, page 3, lines 19-22). By applicant's own admission, the named products meet the limitation of the claimed interference pigments. Therefore, it is the Examiner's position that the claimed limitations are inherently met by the prior art which cites the same tradenames. Additionally, the art cited by the applicant is not properly listed on an IDS, and the contents therein are not considered by the Examiner.

Claims 1-34 are rejected under 35 USC 103(a) as being unpatentable over either US 5,960,916 or WO 99/66883 each in view of the other for reasons as stated previously. Applicant's arguments are specifically directed to lines and wrinkles "associated with aging of the skin", including the arguments that are also directed to hindsight reconstruction. As the amendment is not entered, applicant's arguments are moot. Applicant further argues that the weight percentages of the instantly claimed compositions are not disclosed or taught by the cited references. However, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. In re Aller, 220 F.2d 454, 105 USPQ 233, 235 (CCPA 1955).